Filed 10/17/16 In re R.G.V. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re R.G.V., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B270602 (Super. Ct. No. J068646) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. R.A.V. et al., Defendants and Appellants.	

R.A.V. ("Father") and B.D. ("Mother") appeal an order of the juvenile court declaring that their minor son R.G.V. is adoptable and terminating their parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

Mother and Father have five children together; four-year-old R.G.V. is the youngest. Since 2002, at different times, the children have become dependents of the juvenile court. In 2004, the court terminated Mother's and Father's parental rights after they failed to reunify with two daughters. In 2012, infant R.G.V. and his two teenage brothers became dependents of the court when Mother and Father were incarcerated.

[1] All statutory references are to the Welfare and Institutions Code.

Father, but not Mother, reunified with R.G.V. and his brothers, and the dependency proceeding was dismissed.

On February 2, 2015, the Ventura County Human Services Agency ("HSA") filed a new dependency petition regarding R.G.V. and his brothers. HSA alleged that Mother and Father have a history of substance abuse and criminal behavior, and that Father inflicted physical injuries on his son N. N. informed the HSA social worker that Father "'beat'" him with a leather belt more than 15 times in response to N.'s school report card. N. stated that Father also struck R.G.V., "but not as often."

The juvenile court ordered that the children be detained and it placed custody and care of the children with HSA. On May 21, 2015, the court held a contested jurisdiction and disposition hearing. Mother, Father, and the HSA social worker testified and the court received evidence of HSA reports. Following argument by the parties, the court sustained the allegations of the juvenile dependency petition. (§ 300, subds. (b) & (j).)

At that hearing, the juvenile court also determined that neither Mother nor Father would receive family reunification services pursuant to the "bypass" provisions of section 361.5, subdivision (b)(3) [Father], (10) [both], (11) [both], (13) [Mother]. The court then set the matter for a permanent plan hearing. (§ 366.26.)

On February 18, 2016, the juvenile court held a contested permanent plan hearing. The court received evidence of HSA reports and heard testimony from the HSA social worker, Mother, Father, and R.G.V.'s brothers, among other witnesses. The parents' attorneys argued that the "beneficial parental relationship" and "sibling relationship" exceptions to adoption applied and that parental rights should not be terminated. HSA and R.G.V.'s attorney disagreed and asserted that neither exception applied. Following argument by the parties, the court found by clear and convincing evidence that R.G.V. was adoptable, and that neither exception applied. It then terminated parental rights.

Mother and Father appeal and contend that the juvenile court erred by not applying the beneficial parental relationship exception or the sibling exception to adoption.

(§ 366.26, subd. (c)(1)(B)(i) & (v).) Each party joins the arguments of the other. (Cal. Rules of Court, rule 8.200(a)(5).)

DISCUSSION

I.

Father and Mother assert that the beneficial parental relationship exception to adoption precludes termination of their parental rights. (§ 366.26, subd. (c)(1)(B)(i).) They point out that they consistently visited with R.G.V., the visits were playful and loving, and R.G.V. looked forward to the visits. Father and Mother assert that they have been involved with R.G.V. for much of his young life.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936.) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the

child's particular needs. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 470-471 [beneficial parental relationship exists where child in mother's care nine years and he expressed preference to live with her]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial parental relationship exists where children in mother's care the majority of their lives].)

Father and Mother did not meet their evidentiary burden regarding this exception. R.G.V.'s brothers informed the HSA social worker that Father emotionally and physically abused them. R.G.V. reported to his foster father that Father spanked him with a belt and also hit the children of Father's girlfriend. R.G.V. remembers Father's physical abuse of his brothers and expressed concern when he saw his foster father's belt. Moreover, four months prior to the permanent plan hearing here, HSA removed Father's infant child from his girlfriend's home following domestic violence between Father and the girlfriend.

Although Mother's and Father's supervised visits with R.G.V. were pleasant, he separated easily from them following the visits. R.G.V. had lived in foster homes for much of his young life. He lived with Mother for only four months; she was incarcerated for 25 months of R.G.V.'s life and has not been his primary caregiver. R.G.V. lived with Father for approximately two years and with foster parents otherwise.

R.G.V. expressed a desire to the HSA social worker and to his attorney to remain in his preadoptive home with his foster father and his maternal grandmother and to "be there forever." The HSA social worker observed R.G.V. to be "emotionally thriving" with the foster father who had befriended him at infancy. Return to his parents' custody would not be in R.G.V.'s best interests. *(In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].)

II.

Father and Mother contend that the sibling relationship exception to adoption precludes termination of their parental rights. (§ 366.26, subd. (c)(1)(B)(v).) They rely upon the significant "anchor" relationship between R.G.V. and his teenage brothers, ages

16 and 18 at the time of the permanent plan hearing. They argue that insufficient evidence supports the juvenile court's ruling.

The sibling relationship exception to adoption applies where adoption would create a "substantial interference with a child's sibling relationship." (§ 366.36, subd. (c)(1)(B)(v).) In determining whether the exception applies, the juvenile court should consider the nature and extent of the sibling relationship, including a child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 593.) Application of the exception is "rare," particularly where the dependency proceedings concern a young child. (*Ibid.*)

Father and Mother did not establish that the children's sibling relationship should preclude adoption as the permanent plan. Although the children have an obvious sibling bond, the teenage brothers were closer to each other than to R.G.V., who had been placed apart from them. Moreover, the older brother, now 18 years old, planned to leave the area and join the United States Air Force. The adoption also was unlikely to interfere with the sibling relationship because R.G.V. lived with his foster father and his maternal grandmother who facilitated sibling visits. In sum, sufficient evidence supports the juvenile court's finding that application of the sibling relationship exception here was not in the child's best interests.

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant R.A.V.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant B.D.

Leroy Smith, County Counsel, Linda L. Stevenson, Assistant County Counsel, for Plaintiff and Respondent.